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DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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Analysis of Enrolled Senate Bills 603-4

Topic: Auctioneer Regulation
Sponsor: Senator Jelinek
Co-sponsors: Senators Allen and Basham
Committee: Senate Economic Development, Small Business & Regulatory Reform
House Commerce
Date Introduced: June 16, 2005
Date Enrolled: December 13 (Senate Bill 603) and December 12 (Senate Bill 604)
Date of Analysis: December 14, 2006

Position: The Department of Labor & Economic Growth does not support the bills.

Background:

There has been a desire to register auctioneers on a statewide basis at least since 1997, because Michigan's current system of regulating auctions and auctioneers, which relies on local registration, is not effective. Under current law a person planning an auction is required to obtain a license from the township clerk at least 10 days before the sale. The licensing fee is \$25 and a bond in an amount determined by the township board is required to be posted at the time of application. The auctioneer is required to submit a report to the Department of Treasury within 10 days of the sale. Cities and villages have the authority to regulate auction sales under the provisions of the home rule laws. According to proponents of state regulation, local requirements relating to auction sales are frequently ignored and seldom enforced.

Description of Bill:

Senate Bill 603 amends the Occupational Code by adding a new article 28, creating a Board of Auctioneers and providing for statewide registration of auctioneers. Individuals and qualifying officers of legal entities, except those exempted by the bill, would be required to obtain a registration to conduct an auction as a "registered auctioneer". Requirements include:

1. Participation in the conduct of at least 10 auctions under a two-year apprenticeship with a registered auctioneer or graduation from an accredited auction school and 1 year of apprentice experience
2. Completion of an examination, and
3. Good moral character.

There is also a grandfathering provision. The bill would take effect on October 1, 2007.

Senate Bill 604 contains fees for auctioneer registration under the State License Fee Act. The Senate substitute substantially increased the fees. The bills are tie-barred to each other.

The House adopted a substitute that makes technical amendments requested by the department.

Arguments For:

The current Michigan requirements are considered burdensome and unworkable. Michigan auctioneers are concerned about the difficulties and costs of being licensed in every city, village or township in which they do business. Additionally, they are at a competitive disadvantage relative to auctioneers in nearby states. Ohio, Indiana and Wisconsin all have full licensure. Auctioneers from those states can hold sales almost without limitation in Michigan. By contrast, Michigan auctioneers cannot conduct a sale in these states unless they obtain a license or registration from each state. If Michigan had a system of registration, comparable to those states, reciprocity for our registrants would be available. Financial and record-keeping requirements in Senate Bill 603 along with oversight by the department would enhance public protection for many Michigan citizens who buy or sell at auction.

As a result of the sponsor, the House, and the auctioneers willingness to adopt amendments recommended by the department, the bill is technically sound. The Senate also made an effort to ensure that funding for the program was solid by substantially increasing the fees.

Arguments Against:

The benefits may not outweigh the costs. State registration is unlikely to stop itinerant auctioneers from coming to Michigan for a weekend sale. State sales tax collections would then be unlikely to increase, and Michigan consumers won't have significantly greater protection from unscrupulous auctioneers and questionable goods. Despite the relative competitive disadvantage Michigan auctioneers have in neighboring states, it is possible under current law to successfully do business in those states, and several Michigan firms do this.

State regulation may serve to reduce competition, and limit options for state citizens, and, as a registration act, provide a false sense of protection to the public.

The fees provided may not cover department costs to administer this program. As a voluntary registration program, it is possible that many auctioneers will opt not to pay the \$200 annual license fee.

Supporters:

The Michigan Association of Auctioneers supports the bills.

Opponents:

Bureau of Commercial Services

Fiscal Information:

To accommodate additional requirements on the Bureau of Commercial Services, the following costs would be incurred:

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| Registration, one additional Word Processing Assistant, | \$50,544 |
| + equipment and supplies | \$05,000 |
| Audit: one additional auditor at | \$73,840 |
| + equipment and supplies | \$10,000 |

Enforcement does not anticipate needing additional staff to process complaints for this occupation.

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| Testing services costs to develop the initial examination | \$18,000 |
| costs to administer the examination quarterly | \$11,000 |
| It is anticipated that the use of an outside contractor would be impractical because of the limited number of applicants for the registration. | |
| Information Technology Support costs would be | \$1,060.00+ |
| with additional costs for issuing registrations and processing renewals. | |
| Total First Year Costs Estimate: | ≈\$169,444 |
| Total First Year Revenues Estimate based upon proposed fees (below): | ≈ \$125,000 |
| Applications 500 @ \$50 | \$25,000 |
| Registration fees 400 @ \$200 | \$80,000 |
| Examinations, first year, 400@ \$50 | \$20,000 |
| <i>Estimated Shortfall in Revenue</i> | <i>\$44,444</i> |

Economic Impact:

The bill provides for registration rather than licensure. This level of regulation permits registered auctioneers to use the title “Michigan registered auctioneer”. This may give a registrant a slight competitive advantage over an individual or company that cannot use that designation because they aren’t qualified to register or have chosen not to do so. Unlike licensure, registration doesn’t regulate a scope of practice. For this reason a registration program may not have offer Michigan registered auctioneers reciprocity in other states, most of which license auctioneers.

Administrative Rule Impact:

Rules would be required to specify how the Bureau of Commercial Services will handle audits, trust accounts, and other administrative issues related to the proposed registration program. This process typically takes at least one year after the effective date of the law to implement the program.